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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 784

AIME BURIE, *et al.*,

Petitioners,

against

OVERSEAS NAVIGATION CORP., SIRENA SHIPPING CO., S.A., PANAMA, and the SS LOMALAND, her engines, boilers, tackle and appurtenances, etc.,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION

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Opinions Below

The opinion of the District Court dismissing the libel is reported at 205 F. Supp. 182. The Court of Appeals for the Second Circuit affirmed on the opinion of the Trial Court at 323 Fed. 2d 873 (1963).

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. Code, Section 1254. The judgment of the Court of Appeals was entered on October 11, 1963.

Questions Presented

(1) Did the extension of the voyage beyond the eighteenth-month period of the original Shipping Articles renew the voyage for an additional eighteen-months?

(2) May a shipowner properly discharge the crew at a final port of discharge when the vessel is sold to another company?

(3) Is a shipowner responsible for a seaman's immigration status, determined by the Immigration Authorities, when no damages are demonstrated.

Statement

This was a suit for wrongful discharge, brought by members of the crew of the SS "Lomaland". This ship flew the Liberian flag, and was owned by Sirena Shipping Co., S.A., a Panamanian corporation. Overseas Navigation of New York acted as the shipowner's agent.

The articles were originally dated August 18, 1956, at the Port of New Orleans, Louisiana. The crew was composed of aliens of various nationalities, some of whom signed on the date of the original articles. The others signed on the vessel at various dates between August of 1956 and March of 1958.

On or about May 4, 1958, the vessel terminated her voyage at the port of New York, and completely discharged her cargo. After all cargo had been unloaded, the vessel underwent repairs in the port of New York, and thereafter was sold on May 30, 1958.

Because of the alien status of the crew members, the consent of the Immigration Department was obtained in order to pay off the crew in New York. Voluntary depar-

ture certificates, known as N. E.-123 forms were obtained from Immigration. The crew was repatriated or positions were obtained for them on other ships sailing from the United States.

Reasons for Denying the Writ

(1) The opinions below are not in conflict with any decision of this Court, or with any decision mentioned in the petition.

It cannot be argued that this case creates a conflict on any level, because the petitioner has failed to cite a single decision which supports either of the contentions upon which petitioners rely. The appeal to the Court of Appeals and this petition both contain two basic propositions; that the articles were automatically renewed for an additional 18 months because the voyage did not end within the original period; and that New York was not a final port of discharge.

However, the record discloses that these contentions are unsupported by evidence or legal authorities. Petitioners rely primarily upon decisions which were cited by the Trial Court and by respondents as a basis for dismissing the libel; *Shanley* v. *The United States*, 294 Fed. 502; and *Corrigan* v. *The United States*, 298 Fed. 610. These decisions held that delay past the original period was actionable only when caused by the fault of the Owner or Master.

Even if such fault was established, there would be no support of the petitioner's position, as the Courts have only obliged the shipowner to permit the seamen to sign off and to pay them wages for the period worked. *Hamilton* v. *The United States*, 268 Fed. 15; *The Hotspur*, Fed. Cases 6720. No authority has held that shipping articles are to be renewed for a like period when the voyage is prolonged.

In any event, there was no evidence of fault on the part of the Master or Owner, and repairs to the vessel were in fact a principal cause of the delay. Petitioners complain that the shipowner failed to prove that delay in completing the voyage was caused by "vicissitude" but again cite no decision which places this burden of proof upon the shipowner.

In absence of direct authority, petitioners have placed reliance upon principles of General Contract Law and Master and Servant Law. No valid conflict can be created by comparing the general aspects of shoreside employment with Maritime Law relating to shipping articles.

The petitioners have also failed to demonstrate any conflict with respect to the second point of the petition; i.e., that New York was not a final point of discharge. All pertinent decisions have held that where the voyage is terminated and all cargo discharged the crew is not obliged to stay with the vessel, nor is the ship under any obligation to employ them further. *The Velma H. Hamlin*, 40 Fed. 2d 852; *The Larimer*, 174 Fed. 429.

No evidence or legal authority was introduced by the libellants to support the contention that the seamen's immigration status at the time of their discharge affected any of their rights. The only testimony relating to this point was presented by the respondents, to the effect that all of the crew's immigration rights were retained. In any event, it was undisputed at the trial that the immigration status of the libellants was determined by Immigration Authorities, and not by the shipowner employer.

(2) No basis for the granting of the writ has been demonstrated.

In support of the argument that this case involves fundamental principles, the petitioners have repeated familiar truisms that seamen are the wards of the Court, and are entitled to paternal judicial treatment. These

basic concepts were not violated in any way by the decisions of the Courts below, which affirmed long established law. As pointed out by the opinion of the Trial Court, no damage to any libellant was proved, and it was shown that a substantial number of the crew did in fact obtain reemployment in the United States or were repatriated.

Moreover, the record is completely devoid of any proof that the libellants sustained damage by reason of their immigration status, or that the shipowner breached any obligation owed to the libellant with respect to immigration. It appears to be the contention of the petitioners that the crew of the SS "Lomaland" was stigmatized by this immigration classification, but no testimony was introduced to support this vague allegation.

If there was no proof that the petitioners themselves were damaged by their discharge and immigration status, it is difficult to understand the argument that the decisions below will have a far reaching and harmful effect upon the "economic potential" of all seamen.

On the other hand, an opposite result would have a crippling effect upon the shipping industry. If a shipowner cannot discharge a crew at a final port of discharge, or if shipping articles are to be renewed for another complete term in case of a prolonged voyage, the operation of merchant ships would be a practical impossibility.

CONCLUSION

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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